Missouri Law Review

Volume 70
Issue 2 *Spring 2005*

Article 7

Spring 2005

Right to a Jury Trial for Legal Claims: Does the Equitable Cleanup Doctrine Make Sense in Missouri

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Right to a Jury Trial for Legal Claims: Does the Equitable Cleanup Doctrine Make Sense in Missouri?

State ex rel. Leonardi v. Sherry[1]

I. INTRODUCTION

The right to a jury trial is older than the Constitution, the Articles of Confederation, and even the settlement of America.[2] The long held tradition makes it difficult to imagine that the presence of an equitable claim could undermine a litigant's entitlement to have his claims heard by a jury of his peers. Yet that is precisely what the equitable cleanup doctrine allows state courts to do.[3] Until recently, the cases decided by the Missouri Supreme Court adhered to the equitable cleanup doctrine, denying jury trials for mixed claims of law and equity.[4]

In *Leonardi*, the Missouri Supreme Court changed the equitable cleanup doctrine by enlarging litigants' right to a jury trial.[5] After *Leonardi*, a claimant does not automatically lose her right to a jury trial because of a single equitable claim.[6] The *Leonardi* court correctly decided that equitable cleanup is inefficient, inflexible, and disrespects the long history of jury trial preference.[7] While the *Leonardi* decision is good judicial policy, it does not provide much guidance for lower courts.

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1. 137 S.W.3d 462 (Mo. 2004) (en banc).

2. *See* Ellen E. Sward, *A History of the Civil Trial in the United States*, 51 U. KAN. L. REV. 347, 353 (2003) ("[T]rial[s first] began developing after the Norman Conquest of 1066.").

3. Before the merger of law and equity, courts in England recognized a distinction between the two court systems. *Id.* at 356-57. Because full justice could not always be achieved in one court, the equitable cleanup doctrine developed allowing a court sitting in equity to award legal remedies as well as equitable remedies. *Id.* at 360. Missouri recognized this doctrine, allowing a court, once equitable jurisdiction attached, to resolve any claim for legal relief without the aid of a jury. *See* JEFFREY A. BURNS, MO. PRAC.: METHODS OF PRACTICE § 10.1, at 344 (2002).

4. *Leonardi*, 137 S.W.3d at 472-73.

5. *See id.* at 473.

6. *Id.* at 474.

7. *Id.* at 473-74.

II. FACTS AND HOLDING

Radiant Research, Inc. ("Radiant") contracted with pharmaceutical companies to oversee the testing of new drugs on human subjects.[8] In turn, Radiant entered into a consulting agreement with Dr. Craig L. Leonardi and Craig L. Leonardi, P.C., (collectively, "Leonardi") to carry out some of the trials using the new drugs.[9] The agreement between Leonardi and Radiant consisted of restrictive covenants prohibiting Leonardi from performing any tests for the pharmaceutical companies unless Radiant served as an intermediary.[10] In November 2001, Leonardi terminated its relationship with Radiant, but in violation of the contract, it continued to conduct tests for the pharmaceutical companies without using Radiant as an intermediary.[11] As a result of the breach, Radiant filed suit seeking both injunctive relief to enforce the restrictive covenants and damages for breach of contract, anticipatory repudiation, and tortious interference with contract.[12] Leonardi responded with counterclaims and affirmative defenses.[13]

On the trial court's own motion, a preliminary injunction hearing was held.[14] The lower court denied the preliminary injunction for several reasons: it was not certain that the restrictive covenant was enforceable, Radiant was not able to show a strong possibility of probable harm,[15] and an injunction would have a negative impact on patients and medical research.[16] As further support, the lower court noted that injunctive relief should only be granted if there is no adequate remedy at law.[17] Because Radiant could receive damages for the breach of contract, the trial court held that a preliminary injunction was not appropriate.[18] Leonardi then voluntarily dismissed its equitable

8. *Id.* at 464.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.* Leonardi's affirmative defenses included laches, estoppel, and unclean hands, and its legal claims alleged breach of contract, breach of the implied covenant of good faith and fair dealing, and an equitable request for a declaratory judgment. *Id.*
14. State *ex rel.* Leonardi v. Sherry, No. ED 82789, 2003 WL 21384384, at *1 (Mo. Ct. App. June 17, 2003) ("*Leonardi I*"), *transferred to* 137 S.W.3d 462 (Mo. 2004) (en banc).
15. *Id.*
16. *Leonardi*, 137 S.W.3d at 464. The St. Louis County Circuit Judge, the Honorable Thea A. Sherry, is the respondent in this action.
17. *Id.*
18. *Id.*

claims,[19] but the trial court held that Leonardi was not entitled to a jury trial because Radiant still had an equitable claim before the court.[20]

After the trial court denied Leonardi's request for a jury trial, Leonardi filed a petition for a writ of prohibition with the Missouri Court of Appeals for the Eastern District.[21] The appellate court issued a writ prohibiting the trial court from commencing further action in the case.[22] Leonardi claimed it was denied its constitutional right to a jury trial because it had brought a claim for damages and the equitable cleanup doctrine should therefore not apply.[23]

The Missouri Court of Appeals for the Eastern District held that there was no current equitable claim for which the trial court had equitable jurisdiction.[24] Citing *State ex rel. Estill v. Iannone*,[25] the appellate court held that without a prayer for an equitable remedy like specific performance, the trial court should not have denied a jury trial.[26] The court made absolute the writ prohibiting the trial court from denying Leonardi a jury trial.[27] Radiant's motion for transfer was then granted by the Missouri Supreme Court.[28] The supreme court affirmed, holding that when a party asserts an equitable claim, the equitable claim does not alone justify a denial of a request for a jury trial on all claims if the party asserts legal claims that are not merely incidental to the equitable claims.[29] In doing so, the Missouri Supreme Court broadened the right to a jury trial, abrogating past precedent and declaring a new standard for Missouri's circuit courts to consider when a proceeding involves both legal and equitable relief.[30]

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19. *Id.*

20. *Id.* at 465. The equitable claim remained because denial of the preliminary injunction did not mean a permanent injunction would not be available and the equitable relief and damages were still before the court. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. State *ex rel.* Leonardi v. Sherry, No. ED 82789, 2003 WL 21384384, at *2 (Mo. Ct. App. June 17, 2003) (The court concluded that there was no indication that the equitable claim brought would result in a grant of equitable relief because the preliminary injunction was denied, suggesting that the equitable claim was not supported by the evidence.), *transferred to* 137 S.W.3d 462 (Mo. 2004) (en banc).

25. 687 S.W.2d 172, 175 (Mo. 1985) (en banc) (granting prohibition when the right to a jury trial is improperly denied by the lower court).

26. *Leonardi I*, 2003 WL 21384384 at *2.

27. *Id.* at *3.

28. *Leonardi*, 137 S.W.3d 462.

29. *Id.* at 474. On transfer, the court denied Radiant's request for a preliminary injunction and made the appellate court's writ prohibiting the trial court from denying Leonardi a jury trial without granting relief on an equitable claim absolute as modified by the supreme court's opinion. *Id.*

30. *Id.* at 473. The court said that the trial court has the discretion to try cases in the "most practical and efficient manner possible" while giving deference to the his-

III. LEGAL BACKGROUND

A. Historical Background

Although this Note is primarily concerned with Missouri law, it is necessary to outline the basic framework of the American court system and the court system upon which it is modeled. Because the "dichotomy of separate jurisdiction" evolved from old England's separation of legal and equitable courts,[31] a summary of the historical background is helpful.

1. The English Court System

The original English courts made "no distinction between law and equity."[32] England developed equity courts during the fourteenth century as a result of inadequacies in the common law court system.[33] As a result, courts of law and equity were separate, often requiring parties to file multiple suits to resolve all claims resulting from a single transaction.[34]

Despite their formal separation, interaction between the courts at law and equity was occasionally necessary.[35] That interaction eventually gave rise to concurrent jurisdiction of equity and law.[36] If the parties' primary rights were legal, those parties were entitled to litigate their claims in a court of law and receive the remedies available in that court for wrongs committed by the opposing party.[37] However, legal remedies were not always sufficient to pro-

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torical preference to a jury trial. *Id.* Therefore, "[u]nless circumstances demand otherwise," the trial court should allow claims at law to be tried by jury while leaving the equitable claims to be tried by the court. *Id.*

31. *Id.* at 468.

32. Sward, *supra* note 2, at 356.

33. Note, *The Right to a Nonjury Trial*, 74 HARV. L. REV. 1176, 1179 (1961); *see, e.g.*, JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 16 (5th ed. 1941) ("The frequent occurrence of cases in which the rules of the law produced manifest injustice . . . and the unwillingness of the common-law judges to allow any modification of the doctrines . . . furnished both the occasion and the necessity for another tribunal, which should adopt different methods and exhibit different tendencies."); Sward, *supra* note 2, at 356-57. The common law writ system required all claims to fall within a limited number of writs. *Id.* at 357. Because the chancery was reluctant to issue new writs to cover all claims, some could not obtain justice in the common law courts. *Id.*

34. FLEMING JAMES, JR. & GEOFFREY C. HAZARD, JR., CIVIL PROCEDURE § 1.6, at 16-17 (3d ed. 1985).

35. Sward, *supra* note 2, at 360. For example, if an equity court hearing a contract case found fraud in the inducement, it could enjoin courts at law from trying a case on the provisions of the contract. *Id.* An equity court could also enjoin proceedings at law that were "duplicitous." *Id.*

36. POMEROY, *supra* note 33, § 217.

37. *Id.*

vide complete justice so equity courts had "the power to interfere and to award . . . . remedies which [were] of the same general kind as those granted by the courts of law to the same litigant parties under the same circumstances."[38] Thus, if the remedies at law were inadequate, an equity court using the equitable cleanup doctrine could award both equitable and legal remedies if the legal claim was incidental to the equitable claim.[39] The cleanup doctrine eliminated the multiplicity of actions that would otherwise occur if equity dismissed the suit and required the remaining claims to be tried at law.[40] An equity court also had the power to enjoin proceedings at law that were "duplicitous" or nullified because of an equitable judgment.[41]

Even though equity courts had the power to act within the legal court's jurisdiction if the circumstances warranted, the legal courts had no similar power.[42] Courts at law could neither interfere with matters before the equity courts nor hear equitable matters.[43] The concurrent jurisdiction and the lack of reciprocity were important for two reasons. First, concurrent jurisdiction demonstrated that even when law and equity courts were separate, they were complementary.[44] Second, the cleanup doctrine illustrated equity's power over courts at law, but those powers were not reciprocal.[45]

By the nineteenth century, England began to merge the courts at law and equity.[46] But even though the courts merged, "little consideration was given to harmonizing rights recognized 'at law' with those 'in equity,' so that . . . it was appropriate to speak of 'legal' and 'equitable' rights as though they were two different though concurrent bodies."[47] Therefore, remnants of the dual system lingered.

2. Right to a Jury Trial

Just like the law and equity court dichotomy, the jury trial can also be traced back to England. The most prominent distinction between law and equity was the absence of a right to a jury trial in equity. This distinction re-

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38. *Id.*

39. *Id.*; *see also* Note, *supra* note 33, at 1181-82.

40. Note, *supra* note 33, at 1181-82.

41. Sward, *supra* note 2, at 360.

42. *Id.* at 360-61. Circumstances warranting intervention included unavailability of an adequate remedy at law and irreparable harm to the petitioner if the equity court did not intervene. *Id.* at 360. Irreparable harm included multiple proceedings arising out the same transaction. *Id.* It is still true today that if there is an adequate remedy available at law, one cannot have an equitable remedy. DAN B. DOBBS, 1 DOBBS LAW OF REMEDIES § 2.2(1) (2nd ed. 1993).

43. Sward, *supra* note 2, at 360-61.

44. *Id.* at 361.

45. *Id.*

46. *Id.* at 358.

47. JAMES & HAZARD, *supra* note 34, § 1.4, at 13.

mained even after the law and equity court systems merged.[48] The evolved practice of selecting twelve impartial jurors with no prior personal knowledge of the facts before them to determine the issues of fact in courts at law became a fundamental element of American jurisprudence.[49] The right to a trial by jury is guaranteed by both the United States Constitution[50] and the Missouri Constitution.[51]

However, the guarantee of a jury trial has not typically applied to equitable claims.[52] The reasons for denying a jury trial in equity are not altogether clear. "At no time in history was the line dividing equity from law altogether—or even largely—the product of a rational choice between issues which were better suited to court or to jury trial."[53] Moreover, there is little indication that the chancellor's initial selection of a trial without a jury reflected a considered rejection of a jury trial.[54] Regardless of the reasoning behind it, most states, including Missouri prior to *Leonardi*, have denied a jury trial for claims seeking equitable relief.[55]

Adoption of the equitable cleanup doctrine complicates the lack of a right to a jury trial for an equitable claim. An equity court could historically obtain jurisdiction over a legal claim even if it were merely incidental to a request for equitable relief.[56] Once it was determined which court had jurisdiction, the corresponding type of trial would be held, i.e. a jury trial for courts sitting at law and a bench trial for a court sitting in equity.[57] As a gen-

48. Sward, *supra* note 2, at 356. Although the origins of the absence of jury trials in equity courts are somewhat unclear, some influential factors include jurors' inability to understand complex instruments involved in equity, the chancellor's tendency to regard himself as an administrator and not a judge, and the court's probable concern with resolving common law trial problems over providing jury trials in its separate legal establishment. Note, *supra* note 33, at 1180-81.

49. Sward, *supra* note 2, at 355-56.

50. U.S. CONST. amend. VII. The Seventh Amendment does not guarantee trial by jury in the state courts. *See* Hammons v. Ehney, 924 S.W.2d 843, 848 n.3 (Mo. 1996) (en banc).

51. MO. CONST. art. I, § 22(a) ("[t]he right of trial by jury as heretofore enjoyed shall remain inviolate . . . .").

52. *See generally* Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959); *see also* JAMES & HAZARD, *supra* note 34, § 8.2.

53. *Id.* at § 8.2, at 417.

54. *Id.*

55. *See* State *ex rel.* Diehl v. O'Malley, 95 S.W.3d 82, 84-86 (Mo. 2003) (en banc) (applying a historical standard to determine whether a jury trial would have been available for an equitable claim at the time the constitutional provision was adopted).

56. Note, *supra* note 33, at 1181.

57. JAMES & HAZARD, *supra* note 34, § 8.4.

eral rule, once equity obtained jurisdiction, it retained it unless the facts relied on to sustain the equity jurisdiction failed.[58]

B. Availability of a Jury Trial for an Equitable Claim in the Federal Court System

An alternative to delving into the intricacies of classifying claims as incidentally or primarily equitable is separation of claims for the purpose of determining whether a litigant may request a jury trial.[59] This view has been adopted in the federal court system.[60] Under this view, equitable and legal claims asserted in one action may be separated because "there is a right to jury trial on the legal claims which must not be infringed either by trying the legal issues as incidental to the equitable ones or by a court trial of a common issue existing between the claims."[61]

The basis for development of this alternative again has its origin in English common law.[62] Prior to the merger of courts of law and equity, difficulty and inefficiency gave rise to the development of the equitable cleanup doctrine.[63] If legal issues were subordinate to equitable issues, the doctrine allowed an equity court to invoke jurisdiction over the entire case.[64] The mere existence of legal issues did not give litigants a right to a jury trial.[65] Even though the use of the equitable cleanup doctrine originated as a result of a dichotomous court system, it continued in the federal courts for over twenty years after the Federal Rules of Civil Procedure merged the courts of law and equity.[66]

After merger, the grounds for the continued use of the equitable cleanup doctrine are not as persuasive.[67] As the Supreme Court began to disfavor the use of the equitable cleanup doctrine, the Court changed the way it looked at

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58. Clark v. Wooster, 119 U.S. 322, 325 (1886). *See* POMEROY, *supra* note 33, § 237(d).

59. Note, *The Right to Jury Trial Under Merged Procedures*, 65 HARV. L. REV. 453, 457 (1952).

60. *See* Ross v. Bernhard, 396 U.S. 531, 537-38 (1970); Dairy Queen, Inc. v. Wood, 369 U.S. 469, 470-71 (1962); Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 508 (1959).

61. *Ross*, 396 U.S. at 538.

62. *See* John E. Sanchez, *Jury Trials in Hybrid and Non-hybrid Actions: The Equitable Clean-up Doctrine in the Guise of Inseparability and Other Analytical Problems*, 38 DEPAUL L. REV. 627, 638-40 (1989).

63. *Id.* at 641-42.

64. A. Leo Levin, *Equitable Clean-up and the Jury: A Suggested Orientation*, 100 U. PA. L. REV. 320, 320 (1951-52); Sanchez, *supra* note 62, at 642.

65. Sanchez, *supra* note 62, at 642.

66. *Id.*

67. *See* Levin, *supra* note 64, at 322-26.

the right to a jury trial.[68] In *Beacon Theatres, Inc. v. Westover*,[69] the Supreme Court eliminated judges' discretion to determine whether the parties were entitled to a jury trial.[70] The *Beacon Theatres* Court held that the right to a jury trial depended solely on the existence of an adequate legal remedy.[71] The Court concluded that legal claims should be tried first, preserving a litigant's right to a jury trial.[72] The Supreme Court further affirmed its preference that legal claims be tried by a jury in *Dairy Queen, Inc. v. Wood*.[73] In *Dairy Queen*, the Court held that litigants are entitled to a jury trial on their legal claims, even if those claims are incidental to equitable claims.[74] Finally, in *Ross v. Bernhard*,[75] the Supreme Court held that any legal component of an otherwise equitable claim must be separated out and the factual issues tried by jury.[76]

C. *Availability of a Jury Trial for an Equitable Claim in Missouri*

The first constitution enacted in the state of Missouri established a dual court system, one to deal with legal claims and another distinct set of courts with equitable powers.[77] The dichotomy was abandoned within a decade of its establishment.[78] Subsequently, Missouri courts have tried both legal and equitable claims in the same court. Since abolishing the dual court system, Missouri courts have dealt with the right to a jury trial dilemma in a somewhat inconsistent manner.[79] While some cases hold that a court may retain jurisdic-

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68. Sanchez, *supra* note 62, at 644.

69. 359 U.S. 500 (1959).

70. *Id.* at 506-08.

71. *Id.*

72. *Id.* at 510-11 ("[O]nly under the most imperative circumstances . . . can the right to a jury trial of legal issues be lost through prior determination of equitable claims.").

73. 369 U.S. 469 (1962).

74. *Id.* at 470.

75. 396 U.S. 531 (1970).

76. *Id.* at 537-38.

77. MO. CONST. of 1820, art. V §§ 1, 10 ("The judicial power as to matters of law and equity, shall be vested in a '*supreme court*,' in a '*chancellor*,' in '*circuit courts*' . . . ."; "The *court of chancery* shall have original and appellate jurisdiction in all matters of equity . . . .").

78. MO. CONST. of 1820, amend. 1, 2 (abolishing the office of chancellor and relegating equity jurisdiction to the supreme court and circuit courts.).

79. *Compare* Rockhill Tennis Club of Kansas City v. Volker, 56 S.W.2d 9 (Mo. 1932), *abrogated by* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004) (en banc), *with* Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968), *abrogated by Leonardi*, 137 S.W.3d 462, *and* Krummenacher v. W. Auto Supply Co., 217 S.W.2d 473 (Mo. 1949) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.

tion over an entire case even when an equitable award is not appropriate,[80] others hold that a court sitting in equity does not have jurisdiction to enter judgment on legal issues if no equitable right has been violated.[81]

In *Rockhill Tennis Club of Kansas City v. Volker*,[82] owners of a tennis club sought to enforce a purchase option in a lease.[83] Although the court refused to enforce the lease on public interest grounds, the tennis club was not precluded from recovering damages.[84] Even though the tennis club owners sought equitable remedies, the court reasoned that a traditionally legal remedy could be awarded because once equity is given jurisdiction over a case, that jurisdiction should not be relinquished "short of doing complete justice," which may include an award for damages.[85]

In *Krummenacher v. Western Auto Supply Co.*,[86] the plaintiffs sought equitable relief and damages resulting from the same occurrence of nuisance.[87] The trial judge denied equitable relief but awarded monetary damages resulting from the nuisance.[88] On appeal, the Missouri Supreme Court held that the lower court sitting in equity did not have the authority to render a judgment on plaintiff's claims at law because the plaintiff was not found to be entitled to equitable relief.[89] As a result, the equitable claim would need to be determined by the court without a jury and the claim for damages must, if the defendant so demands, be determined by a jury.

In *Burnett v. Johnson*,[90] the plaintiffs claimed damages from breach of contract.[91] The defendants responded by asserting an equitable defense, an equitable claim, and a legal claim.[92] The plaintiff objected to the entire suit being tried in equity, without a right to a jury, but the trial court held that defendant's equitable counterclaims converted the case from a case at law to a case in equity.[93] After hearing the evidence, the court found for the defendant on his damage claims but denied equitable relief and found against plain-

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80. *See, e.g.*, *Rockhill Tennis Club*, 56 S.W.2d at 20; Real Estate Sav. Inst. v. Collonius, 63 Mo. 290 (Mo. 1876).

81. *See, e.g.*, *Krummenacher*, 217 S.W.2d at 475.

82. 56 S.W.2d 9 (Mo. 1932), *abrogated by* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004) (en banc).

83. *Id.* at 10.

84. *Id.* at 20.

85. *Id.*

86. 217 S.W.2d 473 (Mo. 1949) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.

87. *Id.* at 473.

88. *Id.*

89. *Id.* at 475.

90. 349 S.W.2d 19 (Mo. 1961), *abrogated by Leonardi*, 137 S.W.3d 462.

91. *Id.* at 20.

92. *Id.*

93. *Id.* at 21-22.

tiff on his claim for damages.[94] On appeal, the Missouri Supreme Court found that the case was properly within equitable jurisdiction originally,[95] but that the cleanup doctrine "applies as a general rule only when the court retains the original case in order to grant some substantial equitable relief."[96] Since the equitable claims failed in this case, the litigants were entitled to have their legal claims tried by jury.[97] Again, the duplicity of claims might require a court to separately determine their merit, dividing those at law and those in equity.

In *Jaycox v. Brune*,[98] the plaintiff sued on two alternative counts, the first to enforce an oral contract to make a will in plaintiff's favor and the second to recover damages for services rendered.[99] The court dismissed the equitable claim and found for the defendant on the legal claim after a bench trial.[100] The court characterized the general rule to require that "equity jurisdiction must first attach both under the pleadings and the proof" before a jury trial could be denied on a legal claim.[101] Since the trial court had found no equity in the counts requesting enforcement of the contract, and the remaining count was purely legal, the plaintiff was entitled to a jury trial.[102]

In *Willman v. Beheler*,[103] plaintiff sued defendant requesting enforcement of a restrictive covenant, and defendant counterclaimed for damages.[104] The lower court, in a trial without a jury, entered judgment for defendant on plaintiff's petition and against defendant on his counterclaim.[105] On appeal, the Missouri Supreme Court found that enforcing the restrictive covenant nearly five years later would not be sufficient relief.[106] However, the court found that the equity court could award monetary damages on the equitable claim.[107] The case was remanded for the lower court to determine the damages caused to the plaintiff by the defendant's violation of the covenant.[108]

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94. *Id.*

95. *Id.* at 23.

96. *Id.*

97. *Id.* The plaintiff's request for a jury trial was not properly asserted at the trial court below, therefore it was not preserved for appeal. *Id.* at 24.

98. 434 S.W.2d 539 (Mo. 1968), *abrogated by* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004) (en banc).

99. *Id.* at 541.

100. *Id.*

101. *Id.* at 543.

102. *Id.*

103. 499 S.W.2d 770 (Mo. 1973) (en banc) ("*Willman I*"), *abrogated by* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004) (en banc).

104. *Id.* at 773.

105. *Id.*

106. *Id.* at 778.

107. *Id.*

108. *Id.* at 778-79.

On remand in *State ex rel. Willman v. Sloan*,[109] the trial court granted the original defendant's request for a jury trial on the claim for damages.[110] The original plaintiff sought a writ of prohibition to prevent the jury from being impaneled.[111] The defendant argued that the only issue on remand was the amount of damages caused, an issue at law requiring a jury trial.[112] The Supreme Court of Missouri held that the issue was equitable, relying on its *Willman I* finding that the plaintiff's claim was enforceable in equity despite the fact that monetary damages were the appropriate remedy.[113]

IV. THE INSTANT DECISION

A. The Majority Decision

In *State ex rel. Leonardi v. Sherry*,[114] the Missouri Supreme Court held that Leonardi could not be denied a jury trial on his legal claims simply because Radiant requested an injunction, which is an equitable remedy.[115] To arrive at this decision, the court reviewed Missouri's "inconsistent and confusing" law.[116] In reexamining the holdings in *Jaycox*,[117] *Burnett*,[118] *Krummenacher*,[119] *Rockhill Tennis Club*,[120] *Willman I*,[121] and *Willman II*,[122]

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109. 574 S.W.2d 421 (Mo. 1978) (en banc) ("*Willman II*"), *abrogated by* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462 (Mo. 2004) (en banc).

110. *Id.* at 422. The respondent in *Willman II*, the Honorable Charles H. Sloan, was the judge at the trial level who granted the request for a jury trial. *Id.* at 421-22.

111. *Id.* at 422.

112. *Id.*

113. *Id.* at 423.

114. 137 S.W.3d 462 (Mo. 2004) (en banc).

115. *Id.* at 474.

116. *Id.* at 465.

117. Jaycox v. Brune, 434 S.W.2d 539, 543 (Mo. 1968) (holding that an equitable court is without jurisdiction to dispose of the entire claim if the equitable claim fails), *abrogated by Leonardi*, 137 S.W.3d 462.

118. Burnett v. Johnson, 349 S.W.2d 19, 23-24 (Mo. 1961) (despite finding that if equitable claims were unsuccessful the claims at law should have been tried before a jury, the court held that the plaintiffs had waived their right to a jury trial), *abrogated by Leonardi*, 137 S.W.3d 462.

119. Krummenacher v. W. Auto Supply Co., 217 S.W.2d 473, 475 (Mo. 1949) (en banc) (holding that in absence of an equitable right, the equitable court does not have jurisdiction to hear legal claims), *abrogated by Leonardi*, 137 S.W.3d 462.

120. Rockhill Tennis Club of Kansas City v. Volker, 56 S.W.2d 9 (Mo. 1932) (holding that if a court was unable to grant equitable relief, the court should retain jurisdiction to award legal damages), *abrogated by Leonardi*, 137 S.W.3d 462.

121. Willman v. Beheler, 499 S.W.2d 770, 778-79 (Mo. 1973) (en banc) (holding that a court in equity can award a legal remedy despite the failure of an equitable remedy), *abrogated by Leonardi*, 137 S.W.3d 462.

the court found that this entire line of precedent failed to account for the historical preference given to jury trials and the consolidation of legal and equitable jurisdiction.[123]

Precedent, found the court, tended to fall within two principal categories.[124] The first category of holdings[125] stated that once a court of equity acquired jurisdiction, the court could retain jurisdiction in order to provide the parties with complete justice, especially if the court were considering a prayer for general relief.[126] The court distinguished that line of cases from the second category which asserted that if a court sitting in equity did not award equitable relief, the court did not have jurisdiction to render judgment on the legal issues before it.[127] The majority concluded that the results of applying the two principles in recent cases were "mixed."[128]

The court specifically examined several decisions.[129] In *Rockhill Tennis Club*,[130] the supreme court instructed the trial court to hold a hearing without a jury for damages, a legal remedy, despite the fact that no equitable remedies were appropriate.[131] Similarly, in *Willman I*[132] and *Willman II*,[133] the court

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122. State *ex rel.* Willman v. Sloan, 574 S.W.2d 421, 422-23 (Mo. 1978) (en banc) (holding that when the facts sustaining equitable jurisdiction fail, the equity court does not have jurisdiction to award damages at law), *abrogated by Leonardi*, 137 S.W.3d 462.

123. *Leonardi*, 137 S.W.3d at 468.

124. *Id.* at 465-66.

125. Specifically cited by the court in support of this proposition was *State ex rel. Drey v. Hoester*, 608 S.W.2d 401, 404 (Mo. 1980) (en banc) ("Once having acquired jurisdiction equity will retain it, under a prayer for general relief . . . , to administer full and complete justice."). *See, e.g.*, Deutsch v. Wolff, 994 S.W.2d 561, 567 (Mo. 1999) (en banc) (retaining jurisdiction on both an equitable and legal claim in order to avoid inconsistent judgments and "afford complete justice"); Metro. St. Louis Sewer Dist. v. Zykan, 495 S.W.2d 643, 658 (Mo. 1973) (en banc) (finding that an equitable court can retain jurisdiction in order to provide full justice especially if there is a general prayer for relief); Townsend v. Maplewood Inv. & Loan Co., 173 S.W.2d 911, 914 (Mo. 1943) (holding that equitable courts may retain jurisdiction once invoked in order to provide complete relief).

126. *Leonardi*, 137 S.W.3d at 465.

127. *Id.* at 465-66. *See, e.g.*, *Willman II*, 574 S.W.2d at 422-23; Jaycox v. Brune, 434 S.W.2d 539, 543 (Mo. 1968), *abrogated by Leonardi*, 137 S.W.3d 462; Krummenacher v. W. Auto Supply Co., 217 S.W.2d 473, 475 (Mo. 1949), *abrogated by Leonardi*, 137 S.W.3d 462.

128. *Leonardi*, 137 S.W.3d at 466.

129. For further discussion of facts and reasoning behind the cases examined, see *supra* notes 79-113 and accompanying text.

130. Rockhill Tennis Club of Kansas City v. Volker, 56 S.W.2d 9 (Mo. 1932), *abrogated by Leonardi*, 137 S.W.3d 462.

131. *Id.* at 20-21.

132. Willman v. Beheler, 499 S.W.2d 770 (Mo. 1973) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.

allowed the parties to proceed in equity even though damages were to be awarded.[134] The Missouri Supreme Court found that a jury trial was not necessary because the underlying claim was equitable, even though the remedy was traditionally legal.[135]

Yet in *Krummenacher*,[136] *Burnett*,[137] and *Jaycox*,[138] the Missouri Supreme Court reached the opposite result, finding that trial courts could not order a jury trial if they had equitable jurisdiction.[139] The *Leonardi* majority noted that those cases would have required two full trials to resolve the claims, one trial before the court on the equitable claim, the other in front of a jury for the legal claim.[140]

Having considered the most recent Missouri precedent, the *Leonardi* court attempted to reconcile those cases but found it "difficult, if not impossible."[141] In *Jaycox*, *Burnett*, and *Krummenacher*, the courts held that a separate trial was needed if equitable relief was not granted.[142] In contrast, in *Rockhill Tennis Club*, *Willman I*, and *Willman II*, preserving an equitable claim was not necessary when granting equitable relief.[143] The quandary remaining, found the court, was "whether equitable 'jurisdiction' is 'established' by facts pleaded, defenses asserted, relief requested, facts proved, relief granted, or some ever changing combination of the above."[144] The court resolved its own question, however, by concluding that the query was not necessary because consideration of the historical preference for jury trials and the consolidation of legal and equitable jurisdiction do not support such a strong separation of legal and equitable causes.[145]

The court then traced the development of a right to a jury trial from English common law, to the first Missouri constitution, and finally to current

133. State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. 1978) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.

134. *See Willman I*, 499 S.W.2d at 778.

135. *Willman II*, 574 S.W.2d at 423.

136. Krummenacher v. W. Auto Supply Co., 217 S.W.2d 473 (Mo. 1949) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.

137. Burnett v. Johnson, 349 S.W.2d 19 (Mo. 1961), *abrogated by Leonardi*, 137 S.W.3d 462.

138. Jaycox v. Brune, 434 S.W.2d 539 (Mo. 1968), *abrogated by Leonardi*, 137 S.W.3d 462.

139. *Krummenacher*, 217 S.W.2d at 475-76; *Burnett*, 349 S.W.2d at 24; *Jaycox*, 434 S.W.2d at 543.

140. State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462, 466-67 (Mo. 2004) (en banc).

141. *Id.* at 468.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

Missouri principles and case law.[146] The court then concluded that after merger of law and equity, the idea of an equitable cleanup doctrine is not necessary because the trial court can render any and all appropriate relief; it does not matter if the remedy requested is equitable, such as a preliminary injunction, or legal, such as monetary damages.[147] The only difficulties that arise, found the court, are issues pertaining to the practical ramifications of the relief sought,[148] because parties have a right to have legal issues tried before a jury[149] but are not entitled to a jury for equitable claims.[150] The court recognized that Missouri cases have followed the equitable cleanup doctrine, but it concluded that "[t]o allow the doctrine of equitable cleanup as a blanket rule to supplant a litigant's ability otherwise to have a jury trial of his or her claims at law demonstrates inadequate respect for [Missouri's preference for jury trials]."[151]

The *Leonardi* court found that within a single action in which multiple remedies are sought, claims at law should be tried to a jury and the court should, at its discretion, determine only equitable claims and defenses consistent with the jury's factual findings.[152] This is consistent with the federal practice.[153] The court also held that for practicality and efficiency reasons, incidental claims at law may be tried without a jury to the court if they are connected to equitable claims.[154] Although the federal courts do not allow any litigant with claims at law, even if they are incidental, to be denied a right to trial by jury for those claims,[155] the Missouri Supreme Court held that allowing incidental claims to be tried to the court is allowable only as an exception to the general rule of jury trials for legal claims.[156]

According to the court, this procedure is beneficial in terms of flexibility, practicality, and efficiency.[157] It also preserves the historical distinction

146. *See id.* at 465-73. For further discussion, see *supra* notes 48-55 and accompanying text.

147. *Leonardi*, 137 S.W.3d at 472.

148. *Id.*

149. *Id. See also* MO. CONST. art. I, § 22(a).

150. *Leonardi,* 137 S.W.3d at 472. *See also* State *ex rel.* Diehl v. O'Malley, 95 S.W.3d 82, 85 (Mo. 2003) (en banc).

151. *Leonardi*, 137 S.W.3d at 473.

152. *Id.*

153. *Id. E.g.*, Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510 (1959) ("[T]he trial court will necessarily have to use its discretion in deciding whether the legal or equitable cause should be tried first. Since the right to jury trial is a constitutional one, however, while no similar requirement protects trials by the court, that discretion is very narrowly limited and must, wherever possible, be exercised to preserve jury trial.").

154. *Leonardi*, 137 S.W.3d at 474.

155. Dairy Queen, Inc. v. Wood, 369 U.S. 469, 470 (1962).

156. *Leonardi*, 137 S.W.3d at 474.

157. *Id.*

between claims at law and in equity without sacrificing the preference for trial by jury.[158] Finally, the procedure does not expand the right to trial by jury because equitable claims will remain in the domain of claims tried to the court.[159] Trial courts have the discretion to resolve cases in the "most practical and efficient manner possible," but their decisions must be consistent with Missouri's preference for a jury trial for legal claims.[160] Therefore, "[u]nless circumstances clearly demand otherwise," trial courts should reserve the legal claims to jury trial with the remaining equitable claims to be tried before the bench.[161] Applying these principles, the court held that the trial court should not have denied Leonardi's request for a jury trial for its legal counterclaims because the existence of an equitable claim does not justify a wholesale denial of a request for a jury trial.[162]

B. The Dissenting Opinion

Judge Benton, joined by Judge Limbaugh, handed down a dissenting opinion rejecting the majority's contention that Missouri case law did not present a clearly defined rule for separating those causes of action entitled to a jury trial from those requiring a bench trial.[163] The dissent found that the general rule is that equity will retain jurisdiction once acquired until complete justice is achieved.[164] The dissent asserted that the cases cited by the majority were not "inconsistent and confusing."[165] Instead, there is a general rule requiring bench trials and the "fail of establishment" exception.[166] The dissent said that the "fail of establishment" exception exists when: 1) only relief at law is sought, or 2) plaintiff's equitable claims are unsuccessful or are dismissed.[167]

The dissent found that all Missouri precedent adhered to the general rule that once equity jurisdiction is invoked, the court retains jurisdiction and the entire case should be court tried before the bench.[168] The reason *Krummenacher*, *Burnett*, and *Jaycox* required juries trials, the dissent found, was because they all fell within the "fail of establishment" exception.[169] On the other

158. *Id.*
159. *Id.*
160. *Id.* at 473.
161. *Id.*
162. *Id.* at 474.
163. *Id.* (Benton, J., dissenting).
164. *Id.* (Benton, J., dissenting).
165. *Id.* (Benton, J., dissenting).
166. *Id.* at 475 (Benton, J., dissenting).
167. *Id.* (Benton, J., dissenting). *See* State *ex rel.* Willman v. Sloan, 574 S.W.2d 421, 423 (Mo. 1978) (en banc), *abrogated by Leonardi*, 137 S.W.3d 462.
168. *Leonardi*, 137 S.W.3d at 475 (Benton, J., dissenting).
169. *Id.* (Benton, J., dissenting).

hand, in *Rockhill Tennis Club*, *Willman I*, and *Willman II*, the court found that the "fail of establishment" exception did not apply so no jury was required.[170]

Although the majority suggests that the latter group of cases is not consistent with the former, the dissent distinguished them based on the type of *claim*.[171] This is different than the majority's approach because by concentrating on the claim, the type of relief does not matter.[172] The dissent pointed out that in *Rockhill Tennis Club* and *Willman II*, the only claims raised were equitable, but the court found that monetary damages, not usually a remedy available in equity, was appropriate in those situations.[173] The dissent distinguished those cases because the claims were not converted into legal claims by the awarding of damages; therefore, the court was justified in not granting a request for a jury trial.[174] In the other cases raised by the majority, both legal and equitable claims were raised, requiring application of the "fail of establishment" exception.[175] Because the equitable claims were dismissed or terminated adversely, a jury was required for the remaining legal claims.[176]

Applying these principles to the case at hand, the dissent found that Leonardi was not entitled to a jury trial.[177] Because plaintiff's request for an equitable remedy was not dismissed or terminated adversely, both legal and equitable claims remained.[178] As a result, the dissent would have held that the trial judge was correct to retain equitable jurisdiction over all the claims and deny a jury trial.[179]

Finally, the dissent argued that the majority was wrong to depart from over one hundred years of precedent that was "fair and efficient."[180] The dissent focused on efficiency, stating that "(1) if the judge grants temporary relief, full relief can follow promptly, or (2) if the judge denies all equitable relief, legal claims still go to the jury."[181] The Missouri rule is better than the rule followed by the federal courts, according to the dissent, because it is more prompt and wastes less time and resources.[182] Therefore, since the cur-

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170. *Id.* (Benton, J., dissenting).

171. *Id.* (Benton, J., dissenting).

172. *Id.* (Benton, J., dissenting).

173. *Id.* (Benton, J., dissenting)

174. *Id.* (Benton, J., dissenting). Missouri's guarantee of a jury trial does not apply to claims seeking equitable relief. *See* State *ex rel.* Diehl v. O'Malley, 95 S.W.3d 82, 85 (Mo. 2003) (en banc).

175. *Leonardi*, 137 S.W.3d at 475 (Benton, J., dissenting).

176. *Id.* (Benton, J., dissenting).

177. *Id.* (Benton, J., dissenting).

178. *Id.* (Benton, J., dissenting). The trial court found that denial of a preliminary injunction did not preclude plaintiff from being awarded a permanent injunction if the facts supported it. *Id.* at 465.

179. *Id.* (Benton, J., dissenting).

180. *Id.* (Benton, J., dissenting).

181. *Id.* (Benton, J., dissenting).

182. *Id.* (Benton, J., dissenting).

rent rule is highly efficient and is not inconsistent, there is no reason to abandon Missouri's settled rule.[183]

V. COMMENT

The major premises cited by the majority in *Leonardi* are not without merit, but the decision does not provide enough guidance for lower courts to follow. The majority decision is beneficial to litigants and to the judicial system in terms of historical preference for a jury trial, consistency with the federal standard, efficiency, and practicality. The *Leonardi* majority correctly asserts that flexibility also recommends the abrogation of precedent,[184] but it does so at the cost of a clear standard. Because *Leonardi* does not propose a firm standard for lower courts to follow, it may need to be refined.

The right to a jury in a civil trial has ancient roots.[185] Once the American government was established, it was quick to model its court system after the English system.[186] Although the structure and procedures have changed, the trial itself has remained largely untouched.[187] Regardless of the outcome, determining the ability of trial courts to hear legal claims without guaranteeing a right to a jury trial through use of the equitable cleanup doctrine is a question that touches the heart of American jurisprudence.[188]

Because of a jury trial's historical roots, some procedures resulting from combined law and equity courts have become antiquated and obsolete.[189] The equitable cleanup doctrine evolved in old England to streamline actions and prevent multiplicity of suits.[190] Although the doctrine had obvious advantages when it was implemented, some of its advantages have been undermined by the merger of law and equity courts.[191] Merger meant that claims of different types could be brought in a single action, removing the procedural and juris-

183. *Id.* (Benton, J., dissenting).

184. *Id.* at 474.

185. *See* Sward, *supra* note 2, at 353-56.

186. *Id.* at 348.

187. *Id.*

188. The right to trial by jury is so important that it is constitutionally protected in nearly every state court system and in the federal court system. Note, *supra* note 33, at 1176.

189. *See* Levin, *supra* note 64, at 320-26. For example, in the distant past a legal claim would be dismissed if brought in an equity court. *Id.* at 322. In modern times, denial of equitable relief does not mandate dismissal of the suit. *Id.* Therefore, "the practicalities have changed." *Id.*

190. Note, *supra* note 33, at 1181-82.

191. The equitable cleanup doctrine was created out of "necessity created by separate court systems," making it more fair to bring both legal and equitable claims and preventing the wastefulness that resulted by separate trials in separate courts. Sanchez, *supra* note 62, at 642.

dictional distinctions between legal and equitable actions.[192] Since merger of the federal court system in 1938, the time and resources once saved by the equitable cleanup doctrine became a matter of right, not doctrinal policy.[193] Missouri also abolished the dichotomy of courts, vesting jurisdiction for claims both in equity and at law within a single court.[194] As a result, in both federal and Missouri courts, the necessity for use of the equitable cleanup doctrine created by separate courts no longer exists.

The United States Supreme Court has indicated that the equitable cleanup doctrine has become increasingly obsolete.[195] Since 1959, the Court has maneuvered away from allowing the equitable cleanup doctrine to preclude jury trials on claims at law, no matter how incidental or insignificant they may be as compared to the equitable claims brought by the parties.[196] Although the Supreme Court has not totally abolished the equitable cleanup doctrine, it has stated that its use should be very narrowly limited in deference to the constitutional right to a jury trial for legal claims.[197]

With the *Leonardi* decision, the Missouri Supreme Court has taken a similar stance. In doing so, the court abrogated numerous cases approving the use of the equitable cleanup doctrine.[198] Since "adherence to precedent should be the rule and not the exception,"[199] the logic upon which the *Leonardi* court departed from precedent must be strong and convincing.[200]

In *Leonardi*, the court based its decision on inconsistency of prior case law, the historical preference for a jury trial, and efficiency.[201] Although the court's reasoning seems quite logical, it must satisfy a high burden to justify departure from precedent. It is well established that both the United States Constitution and the Missouri Constitution only guarantee a right to a jury

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192. *Id.*

193. *See* FED. R. CIV. P. 2.

194. MO. CONST. of 1820, amend. 1, 2 (abolishing the office of chancellor and relegating equity jurisdiction to the supreme court and circuit courts).

195. Sanchez, *supra* note 62, at 644-48.

196. *Id.*

197. Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510 (1959).

198. *See* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462, 472 (Mo. 2004) (en banc).

199. BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 149 (1921).

200. Judges are not irrevocably confined to past decisions. *See id.* at 150. Scholars have identified five factors which should be considered when contemplating departure from stare decisis: 1) whether the court is deciding a statutory or constitutional case, 2) whether the decision is inconsistent with justice, 3) whether there has been substantial reliance on prior decisions, 4) whether the court was unanimous or not in making the precedent, and 5) whether the age of the precedent has caused it to emerge as an authoritative rule. Christopher P. Banks, *Reversals of Precedent and Judicial Policymaking: How Judicial Conceptions of Stare Decisis in the U.S. Supreme Court Influence Social Change*, 32 AKRON L. REV. 233, 235-36 (1999).

201. *Leonardi*, 137 S.W.3d at 465, 472.

trial as to claims brought before the courts at law.[202] When the *Leonardi* court, therefore, refers to the right to a jury trial as "fundamental," it only does so insofar as it relates to a trial by jury for legal claims.[203] The equitable cleanup doctrine, in essence, represents that the "fundamental" right to a jury trial has not historically applied to those legal claims that have been classified as incidental to an equitable claim.[204] The equitable cleanup doctrine developed first in English common law.[205] Therefore it too has a historical basis. The *Leonardi* court's use of historical basis for the right to a jury trial is therefore no more persuasive than the use of historical basis to recommend the continued use of the equitable cleanup doctrine.

The court's other support for its departure from precedent, inconsistency of application of the doctrine in prior cases, was attacked by the dissent.[206] The dissenters argued that the cases consistently applied the rule with respect to the claim brought, not the relief requested.[207] Despite the potential merit to the dissent's argument,[208] the risk of inconsistency in precedent is one which deserves closer consideration. Adherence to precedent protects litigant interests including stability in the law, judicial economy, judicial legitimacy, reliance on the law, and expeditious litigation.[209] If a court does not properly adhere to previous decisions, inconsistent precedent will be created, risking the protection of litigant interests.[210] However, blind adherence to precedent is not always in the interests of justice.[211] When appropriate, the court should be willing to overrule precedent:

> Necessity reaches this outer limit when the policy considerations undergirding adherence either weigh in favor of, or are not implicated by, the limiting or overruling of precedent. Reliance interests are least impacted when an old rule is replaced by one that comports with current modes of behavior. Nor is judicial expedition threatened by a new rule that enhances judicial efficiency. Moreover, both the image of judicial legitimacy and the ethic of equal treatment are less affected by adoption of a rule that promotes

202. JAMES & HAZARD, *supra* note 34, § 8.1 (noting that the right to a jury trial is preserved at least insofar as it existed in English history or at the time the 7th Amendment was adopted).

203. *Leonardi*, 137 S.W.3d at 472.

204. Note, *supra* note 33, at 1181-82.

205. Sward, *supra* note 2, at 360.

206. *Leonardi*, 137 S.W.3d at 474 (Benton, J., dissenting).

207. *Id.* at 475 (Benton, J., dissenting).

208. Examining the factual intricacies is beyond the scope of this Note.

209. Paul W. Werner, Comment, *The Straits of Stare Decisis and the Utah Court of Appeals: Navigating the Scylla of Under-application and the Charybdis of Over-Application*, 1994 B.Y.U. L. REV. 633, 634.

210. *Id.*

211. *Id.* at 650.

> equality of treatment than they are by adherence to a rule that is unprincipled in its reasoning and application.[212]

Thus it is often difficult to justify abrogation, but there are times when a change in the law is not only good policy but also the proper course of action. Bearing in mind the weight afforded to precedent and the considerations that should be taken into account to overrule it, it is useful to look beyond the factual inconsistencies of prior Missouri law. Even assuming that the dissent is correct in its reasoning regarding the distinction between claims brought and relief sought, it wholly ignores the remaining reasoning of the court.[213]

The policies behind the right to a jury trial support erring on the side of caution when depriving a litigant of a jury trial. In the federal courts, not only does the Seventh Amendment protect the right to a jury trial, it has been found that maintaining the right is of "such historical importance that the curtailment of the right to a jury trial should be scrutinized with the utmost care."[214] "The importance of a fair jury trial has [also] been recognized by Missouri courts."[215] Therefore some deference must be given to the policy considerations behind the right to a jury trial.

As noted previously, justifying abrogation is easier if an old rule is replaced by a new rule that comports with current behavioral modes, thereby not harming litigants' reliance interests.[216] *Leonardi*'s practice of severely limiting the equitable cleanup doctrine comports with the federal practice.[217] The United States Supreme Court concluded that the reasons for allowing legal claims to be tried without a jury needed to be re-evaluated because the Federal Rules allowed for liberal joinder of claims, so all causes could be resolved in one civil action.[218] The other basis for not allowing the use of the equitable cleanup doctrine was a result of the Rules, citing that the "'right of trial by jury as declared by the Seventh Amendment to the Constitution . . . shall be preserved . . . inviolate.'"[219] Because Missouri and the federal gov-

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212. *Id.* (footnotes omitted).

213. The dissent carefully distinguishes the type of claims brought, but neglects to comment on any of the remaining issues at hand including efficiency, historical right to a jury trial, or the argument that the equitable cleanup doctrine is not necessary post-merger. *See* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462, 474-75 (Mo. 2004) (en banc) (Benton, J., dissenting).

214. 5 AM. JUR. 2D *Appellate Review* § 737 (2004) (citing generally Curry v. Pyramid Life Ins. Co, 271 F.2d 1 (8th Cir. 1959)).

215. W. Dudley McCarter, *The Right to a Fair Jury Trial—Not a Perfect One*, 53 J. MO. B. 170, 176 (1997) (citing Speck v. Abell-Howe Co., 839 S.W.2d 623, 626 (Mo. Ct. App. 1992)).

216. Werner, *supra* note 209, at 650.

217. Sanchez, *supra* note 62, at 644-48. The federal courts began developing this rule in 1959 beginning with *Beacon Theatres, Inc. Id.* at 644.

218. Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 509 (1959).

219. *Id.* at 510 (quoting FED. R. CIV. P. 38(a)).

ernment provide similar rights to jury trials and both have merged the courts of law and equity, the reasons for limiting equitable cleanup in the federal courts should be equally persuasive for Missouri courts. Additionally, restricting the use of the equitable cleanup doctrine does not deprive any party of substantive rights; it merely lessens the possibility that legal claims will be heard by the court instead of the jury if the parties so desire.

Finally, if the new rule enhances judicial efficiency, disregarding prior Missouri law is more likely to be justified. The dissent and the majority sharply disagreed as to the efficiency of the equitable cleanup doctrine.[220] Although no advantage would be gained if equitable claims were tried simultaneously as unrelated legal claims,[221] there may be some advantage in allowing use of the cleanup doctrine for claims that are intimately related.[222] Nevertheless, the advantages are not necessarily exclusive to use of the doctrine.[223] Even though use of the equitable cleanup doctrine can result in substantial economies, it is not successful in eliminating all costs, and sometimes it even elevates them.[224] As a result, the dissent's claims of efficiency resulting from use of the equitable cleanup doctrine are not overly persuasive. The procedures adopted by the majority could offer a more efficient solution by precluding the need for a second trial if equitable relief is denied. If practicality and efficiency demand it, the *Leonardi* majority allowed for a narrow group of cases to be heard by the court without a jury.[225] However, the majority was not crystal clear as to which cases fall within that narrow group. "Unless circumstances clearly demand otherwise" is not a standard which produces clear results. The court found that a jury trial should be preserved "whenever possible,"[226] which suggests a strong preference for allowing legal claims to be tried by a jury. Nevertheless, the court did not set up a clear test for lower courts to follow. Instead the Missouri Supreme Court left application issues of its decision to the trial courts' "discretion."[227]

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220. *Compare* State *ex rel.* Leonardi v. Sherry, 137 S.W.3d 462, 472 (Mo. 2004) (en banc) *with id.* at 475 (Benton, J., dissenting).

221. Levin, *supra* note 64, at 323.

222. *Id.* at 323-24. For example, if claimant requests specific performance and damages and the court denies equitable relief and is not willing or able to award equitable damages, a further jury trial would be necessary for the legal question of damages. *Id.* at 324. Common evidence would be heard twice, thus creating inefficiency if the cleanup doctrine does not allow the court to award damages using its equitable jurisdiction. *Id.*

223. This situation could be remedied without use of the equitable cleanup doctrine, if the court would empanel a jury to hear the trial from the beginning. *Id.*

224. There is a certain procedural cost in impaneling a jury after equitable relief is denied. *Id.* The overcrowding of dockets and additional attorneys' fees create large time and money costs for the litigants. *See id.*

225. *Leonardi*, 137 S.W.3d at 474.

226. *Id.* at 473.

227. *Id.*

CONCLUSION

The majority in *State ex rel. Leonardi v. Sherry*[228] held that abrogation of hundreds of years of precedent was necessary in order to establish a more efficient and flexible rule consistent with Missouri's historical preference for a jury trial.[229] Although the reasons the majority provided may not precisely fit their purpose, the conclusion that the existence of an equitable claim should not necessarily deprive a litigant of a jury trial has merit and is consistent with the federal practice. Unfortunately, the court allows for trial court discretion but only provides the unclear standard of "[u]nless circumstances clearly demand otherwise."[230] Such a standard gives little guidance to lower courts. The court did, however, suggest a strong preference that claims at law be tried by juries.[231] Such a preference indicates that a lower court is encouraged, in all but a very few occasions,[232] to allow legal claims to be tried to a jury and to reserve to the court only those claims that are almost entirely equitable.

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228. 137 S.W.3d 462 (Mo. 2004) (en banc).

229. *Id.* at 473-74.

230. *Id.* at 473.

231. *Id.*

232. The court does not suggest any occasions that a case may qualify for bench trial alone, but seems to be likely to follow the lead of the federal courts. *See id.*